

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1150 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VANRAJSINH HIRABHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1150 of 2003
MR YOGESH S LAKHANI for Petitioner No. 1
MR LR PUJARI Ld. APP for Respondents

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Heard Mr.P.S.Gondalia, learned advocate for the

petitioner and Mr.L.R.Pujari, learned APP for the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the externment order dated 21.5.2003 (Annexure-A) passed under Section 56 of the Bombay Police Act (hereinafter referred to as "the Act") by respondent no.2, modified in appeal under Section 60 of the Act by respondent no.3 confining the externment of the petitioner to Surendranagar District only.

3. On 21.6.2001, show cause notice came to be served on the petitioner under Section 56 of the Act by respondent no.2. That the petitioner appeared in response to the said show cause notice and after hearing the petitioner, the impugned order of externment (Annexure-A) came to be passed externing the petitioner from Surendranagar district and contiguous districts of Rajkot Rural, Ahmedabad Rural and Bhavnagar District. The said order was challenged by the petitioner by way of an appeal under Section 60 of the Act and the State Government by the order in Appeal under Section 60 of the Act (Annexure-B) modified externment order (Annexure-A) partly allowed the appeal continuing the externment of the petitioner / externee only to Surendranagar District, setting aside the externment of the petitioner from the contiguous districts of Rajkot Rural, Ahmedabad Rural and Bhavnagar District. Thus, the impugned order in the present petition is challenged inasmuch as it externs the petitioner from the territory of Surendranagar District.

4. Challenging the impugned externment order (Annexure-A), it is submitted by Mr.Gondaliya, learned advocate for the petitioner that in the show cause notice (Page-14), 4 cases have been registered against the petitioner under Section 506(2) and 504 of IP Code, Section 136 of the Bombay Police Act; Section 394, 504, 506(2), 114 of the IP Code, Section 332 IPC; Section 107, 151 of IP Code and under the provisions of Cr.P.C. It is further submitted that in the show cause notice the statements of 4 witnesses in unregistered cases have been referred to. That these witnesses are stated to be the victims of the petitioner and that no statement of the persons other than the victims of the petitioner has been recorded so as to reach subjective satisfaction as regards the activities indulged into by the petitioner and there is no material to show that the statements of other persons have been recorded, and that the requirement of Section 56(1) of the Act has not been complied with since the statements recorded are of the

victims only and the subjective satisfaction recorded in the impugned order only relates to the victims of the incident alleged against the petitioner.

Reliance has been placed on the decision rendered in Special Criminal Application No.1303 of 1992 by the Division Bench of this Court, copy whereof has been placed on record. In Para.2 of the said judgment while dealing with the case of externment under Section 56 of the Bombay Police Act, the Division Bench observed, "In the impugned order of externment the Sub-Divisional Magistrate has stated that the victims of the incidents are not willing to come forward to depose against the petitioner because of his fear. Under Section 56 of the Bombay Police Act the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their persons or property. This requirement is not clearly satisfied in the present case. It is clear that the opinion formed by the Sub-Divisional Magistrate is only as regards the witnesses, who are the victims of the said incident and not other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56. Therefore, the impugned order of externment passed by the Sub-Divisional Magistrate, Palitana at Annexure-B and the impugned order passed by the State Government at Annexure-C would be illegal. We are supported in our view by the unreported judgment of this Court in Special Criminal Application No.18 of 1969, relevant portion of which is reproduced in the case of Navabkhan Vs. State of Gujarat, reported in AIR 1974 SC 1471 at Page-1474 Para.5."

5. In the instant case, statements recorded for reaching the subjective satisfaction for the purpose of passing impugned externment order are of the victims and no statement of any other person other than the victims have been recorded for reaching the subjective satisfaction by the externment authority. It has been clearly laid down in the above referred judgment of the Division Bench of this Court that mandatory requirement of Section 56 of the Act requires not only the subjective satisfaction as regards the victims but the Section 56 of the Act also requires the subjective satisfaction as regards the other persons.

6. In the instant case, the subjective satisfaction recorded by the externing authority is only as regards

the witnesses who are the victims of the incident /
externee and there is no subjective satisfaction as
regards the other persons i.e. persons other than the
victims of the petitioner.

7. In my opinion, the present case is squarely
covered by the decision of the Division Bench rendered in
Special Criminal Application No.1303 of 1992 and
therefore, the petition will have to be allowed by
quashing and setting aside the impugned order of
externment (Annexure-A) dated 21.5.2003 passed by
respondent no.2 and the order (Annexure-B) dated
10.11.2003 passed by respondent no.3.

8. In view of the above, this petition is granted
and accordingly allowed. The impugned order of
externment (Annexure-A) dated 21.5.2003 passed by
respondent no.2 and the impugned order (Annexure-B) dated
10.11.2003 passed by the respondent no.3 are hereby
quashed and set aside. Rule made absolute. Direct
service is permitted.

(N.G.Nandi, J.)

(vipul)